

1 PAUL L. REIN, Esq. (SBN 43053)
2 CELIA McGUINNESS, Esq. (SBN 159420)
3 LAW OFFICES OF PAUL L. REIN
4 200 Lakeside Drive, Suite A
Oakland, CA 94612
Telephone: 510/832-5001
Facsimile: 510/832-4787

5 Attorneys for Plaintiff
6 SEBASTIAN DeFRANCESCO

7 JONATHAN S. KITCHEN, Esq (SBN 80270)
8 ALI P. HAMIDI, Esq (SBN 191198)
9 COX, CASTLE & NICHOLSON LLP
10 555 California St., 10th Floor
San Francisco, CA 94104-1513
Telephone: 415/392-4200
Facsimile: 415/392-4250

11 Attorneys for Defendants
12 SRI OLD TOWN, LLC and
FEDERAL REALTY INVESTMENT TRUST

13 MARK F. HAZELWOOD, Esq (SBN 136521)
14 LAURA S. FLYNN, Esq (SBN 148511)
15 LOW, BALL & LYNCH
16 505 Montgomery St., 7th Floor
San Francisco, CA 94111-2584
Telephone: 415/981-6630
Facsimile: 415/982-1634

17 Attorneys for Defendant
18 TOWN OF LOS GATOS

19 IN THE UNITED STATES DISTRICT COURT
20 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

21 SEBASTIAN DEFRANCESCO,

22 Plaintiff,

23 v.

24 SRI OLD TOWN, LLC; FEDERAL
25 REALTY INVESTMENT TRUST;
26 TOWN OF LOS GATOS; and DOES
1-10, Inclusive,

27 Defendants.
28

CASE NO. C09-2123 JL

Civil Rights

**CONSENT DECREE AND
[PROPOSED] ORDER**

1 1. Plaintiff SEBASTIAN DEFRANCESCO filed a Complaint in this
 2 action on May 14, 2009, to obtain recovery of damages for his discriminatory
 3 experiences, denial of access, and denial of civil rights, and to enforce provisions
 4 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et*
 5 *seq.*, and California civil rights laws against Defendants SRI OLD TOWN, LLC,
 6 FEDERAL REALTY INVESTMENT TRUST, and TOWN OF LOS GATOS,
 7 relating to the condition of their public accommodations as of August 28, 2008,
 8 and continuing. Plaintiff has alleged that Defendants SRI OLD TOWN, LLC,
 9 FEDERAL REALTY INVESTMENT TRUST violated Title III of the ADA,
 10 defendant TOWN OF LOS GATOS violated Title II of the ADA, and all
 11 defendants violated sections 54, 54.1, 54.3 and 55 of the California Civil Code,
 12 and sections 19955 *et seq.* of the California Health & Safety Code by failing to
 13 provide full and equal access to their facilities at Parking Lot No. 5 (Assessor's
 14 parcel No. 529-03-29), located between Main and Elm Streets in the Town of Los
 15 Gatos, and the "Old Town Center" shopping center (Assessor's parcel No. 529-
 16 02-44), located at University Ave and Elm St., in the Town of Los Gatos,
 17 California, and the disabled access lift connecting the path of travel between these
 18 properties.

19 2. Defendants SRI OLD TOWN, LLC, FEDERAL REALTY
 20 INVESTMENT TRUST, and TOWN OF LOS GATOS deny the allegations in the
 21 Complaint and by entering into this Consent Decree and Order do not admit
 22 liability to any of the allegations in Plaintiff's Complaint filed in this action.
 23 Plaintiff SEBASTIAN DEFRANCESCO, defendants SRI OLD TOWN, LLC,
 24 FEDERAL REALTY INVESTMENT TRUST, and TOWN OF LOS GATOS,
 25 hereinafter, collectively, "the parties," hereby enter into this Consent Decree and
 26 Order for the purpose of resolving this lawsuit without the need for protracted
 27 litigation and without the admission of any liability.

28

1 **JURISDICTION:**

2 3. The parties to this Consent Decree agree that the Court has
3 jurisdiction of this matter pursuant to 28 U.S.C. § 1331 for alleged violations of
4 the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* and
5 pursuant to supplemental jurisdiction for alleged violations of California Health
6 & Safety Code §§ 19955 *et seq.*; and California Civil Code §§ 54, 54.1, 54.3, and
7 55.

8 4. In order to avoid the costs, expense, and uncertainty of protracted
9 litigation, the parties to this Consent Decree agree to entry of this Order to resolve
10 all claims regarding injunctive relief raised in the Complaint filed with this Court.
11 Accordingly, they agree to the entry of this Order without trial or further
12 adjudication of any issues of fact or law concerning Plaintiff's claims for
13 injunctive relief.

14 WHEREFORE, the parties to this Consent Decree hereby agree and
15 stipulate to the Court's entry of this Consent Decree and Order, which provides as
16 follows:

17
18 **SETTLEMENT OF INJUNCTIVE RELIEF:**

19 5. This Order shall be a full, complete, and final disposition and
20 settlement of Plaintiff's claims against Defendants for injunctive relief that have
21 arisen out of the subject Complaint. The parties agree that there has been no
22 admission or finding of liability or violation of the ADA and/or California civil
23 rights laws, and this Consent Decree and Order should not be construed as such.

24 6. The parties agree and stipulate that the corrective work will be
25 performed in compliance with the standards and specifications for disabled access
26 as set forth in the California Code of Regulations, Title 24-2, and Americans with
27 Disabilities Act Accessibility Guidelines, unless other standards are specifically
28 agreed to in this Consent Decree and Order.

1 a) **Remedial Measures:**

2 (1) Defendants agree to perform corrective work at Parking
3 Lot No. 5 (Assessor's parcel No. 529-03-29), located
4 between Main and Elm Streets in the Town of Los
5 Gatos, and the "Old Town Center" shopping center
6 (Assessor's parcel No. 529-02-44), located at University
7 Ave and Elm St., in the Town of Los Gatos, California,
8 and the disabled access lift connecting the path of travel
9 between these properties. The scope of the corrective
10 work agreed is as follows, referring to label on Exhibit
11 A, the aerial map:

12 (a) Defendant TOWN OF LOS GATOS will:

- 13 (i) Restripe parking space B1 to move the
14 access aisle to the passenger side;
15 (ii) Add one additional parking space with
16 access aisle to the left of existing bank of
17 accessible parking spaces near C4

18 (b) Defendants SRI OLD TOWN, LLC, and
19 FEDERAL REALTY INVESTMENT TRUST
20 will:

- 21 (i) Install a door closer on the lift doors at both
22 the upper and lower stations, and adjust to
23 ensure the doors
24 1) Close no faster than 3 seconds from
25 an open position of 70 degrees to a
26 point 3 inches from the latch;
27 2) require no more than 8.5 pounds of
28 push pressure to operate;

- (ii) Correct the slope of the upper landing to be no more than 2% in any direction;
- (iii) Ensure that the level of the upper landing pad is flush with the door threshold of the lift;
- (iv) Adjust the lift to stop no more than 1/4" above the threshold at both the upper and station;
- (v) Provide a flush transition at the curb ramp near C4, leading to the lift, by rebuilding the ramp or by raising the pavement of the parking lot to the height of the existing ramp.

(2) Defendants SRI OLD TOWN, LLC, and FEDERAL REALTY INVESTMENT TRUST agree to maintain the access lift at the subject premises in an operable manner. In addition defendants SRI OLD TOWN, LLC, and FEDERAL REALTY INVESTMENT TRUST agree to the following :

- (a) They will perform routine maintenance once per month.
- (b) They shall make repairs within 10 days, subject to instances where parts and permits may require further time, and will use best efforts to obtain such parts and permits in a commercially reasonable time frame.
- (c) Whenever the lift is out of order a sign shall be placed on it stating the date repairs will be

completed and providing the name, title, and
direct line phone number for the person
responsible for the repairs.

(3) The parties agree that none of the defendants have any
obligation to remediate the items labeled at C1-C3 of
Exhibit A.

b) **Timing of Injunctive Relief for TOWN OF LOS GATOS:**
All injunctive relief will be completed within 120 days of May
14, 2010.

c) **Timing of Injunctive Relief for SRI OLD TOWN, LLC,
and FEDERAL REALTY INVESTMENT TRUST:** All
injunctive relief will be completed within 90 days of May 14,
2010.

d) Defendants will notify plaintiff's counsel in writing when all
remedial measures referred to in paragraphs 6.A.1 and 6.A.2
have been taken. If defendants fail to provide injunctive
relief on the agreed to timetable and/or fail to provide timely
written status notification, and plaintiff files a motion with the
court to obtain compliance with these terms, plaintiff reserves
the right to seek additional attorney fees for all compliance
work necessitated by defendants' failure to keep their
agreement.

DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:

7. The parties have not reached an agreement regarding Plaintiff's
claims for damages, attorney fees, litigation expenses and costs. These issues
shall be the subject of further negotiation, litigation, and/or motions to the Court.
All the parties stipulate to request that the Court not dismiss the case, as issues of

1 damages and attorney fees are still before the Court.

2
3 **ENTIRE CONSENT ORDER:**

4 8. This Consent Decree and Order and Attachment A to this Consent
5 Decree and Order, which is incorporated herein by reference as if fully set forth in
6 this document, constitute the entire agreement between the signing parties on the
7 matters of injunctive relief. No other statement, promise or agreement, either
8 written or oral, made by any of the parties or agents of any of the parties that is
9 not contained in this written Consent Decree and Order shall be enforceable
10 regarding the matters of injunctive relief described herein. This Consent Decree
11 and Order applies to Plaintiff's claims for injunctive relief only and does not
12 resolve Plaintiff's claims for damages, attorney fees, litigation expenses and costs.

13
14 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN
15 INTEREST:**

16 9. This Consent Decree and Order shall be binding on the parties and
17 all successors in interest. The parties have a duty to so notify all such successors
18 in interest of the existence and terms of this Consent Decree and Order during the
19 period of the Court's jurisdiction of this Consent Decree and Order.

20
21 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS
22 TO INJUNCTIVE RELIEF ONLY:**

23 10. Each of the parties to this Consent Decree understands and agrees
24 that there is a risk and possibility that, subsequent to the execution of this
25 Consent Decree, any or all of them will incur, suffer or experience some further
26 loss or damage with respect to the lawsuit which are unknown or unanticipated at
27 the time this Consent Decree is signed. Except for all obligations required in this
28 Consent Decree, the parties intend that this Consent Decree apply to all such

1 further loss with respect to the lawsuit, except those caused by the parties
 2 subsequent to the execution of this Consent Decree. Therefore, except for all
 3 obligations required in this Consent Decree, this Consent Decree shall apply to
 4 and cover any and all claims, demands, actions and causes of action by the parties
 5 to this Consent Decree with respect to the lawsuit, whether the same are known,
 6 unknown or hereafter discovered or ascertained, and the provisions of Section
 7 1542 of the California Civil Code are hereby expressly waived. Section 1542
 8 provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
 10 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
 11 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
 12 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
 13 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
 14 THE DEBTOR.

15 11. Except for all obligations required in this Consent Decree, each of
 16 the parties to this Consent Decree, on behalf of each, their respective agents,
 17 representatives, predecessors, successors, heirs, partners and assigns, releases and
 18 forever discharges each other Party and all officers, directors, shareholders,
 19 subsidiaries, joint venturers, stockholders, partners, parent companies, employees,
 20 agents, attorneys, insurance carriers, heirs, predecessors, and representatives of
 21 each other Party, from all claims, demands, actions, and causes of action of
 22 whatever kind or nature, presently known or unknown, arising out of or in any
 23 way connected with the lawsuit.

24 **TERM OF THE CONSENT DECREE AND ORDER:**

25 12. This Consent Decree and Order shall be in full force and effect for a
 26 period of twelve (12) months after the date of entry of this Consent Decree and
 27 Order, or until the injunctive relief contemplated by this Order is completed,
 28 whichever occurs later. The Court shall retain jurisdiction of this action to
 enforce provisions of this Order for twelve (12) months after the date of this

1 Consent Decree, or until the injunctive relief contemplated by this Order is
2 completed, whichever occurs later.

3
4 **SEVERABILITY:**

5 13. If any term of this Consent Decree and Order is determined by any
6 court to be unenforceable, the other terms of this Consent Decree and Order shall
7 nonetheless remain in full force and effect.

8
9 **SIGNATORIES BIND PARTIES:**

10 14. Signatories on the behalf of the parties represent that they are
11 authorized to bind the parties to this Consent Decree and Order. This Consent
12 Decree and Order may be signed in counterparts and a facsimile signature shall
13 have the same force and effect as an original signature.

14
15 //

16 // Dated: 5/14, 2010

PLAINTIFF SEBASTIAN DEFRANCESCO

18 
19 SEBASTIAN DEFRANCESCO

20 Dated: 5.14, 2010

DEFENDANT SRI OLD TOWN, LLC

22
23 By: 

24 Dated: 5.14, 2010

DEFENDANT FEDERAL REALTY
INVESTMENT TRUST

26
27 By: 
28

1 Dated: _____, 2010

DEFENDANT TOWN OF LOS GATOS

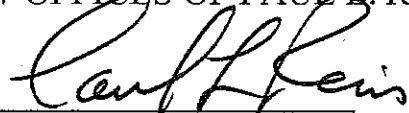
2
3 By: _____

4 //
5 //
6 //

7 APPROVED AS TO FORM:

8 Dated: ^{May 14}~~January 14~~, 2010

LAW OFFICES OF PAUL L. REIN



By PAUL L. REIN
Attorneys for Plaintiff
SEBASTIAN DEFRANCESCO

11
12 ^{May 14}
13 Dated: ~~January 14~~, 2010

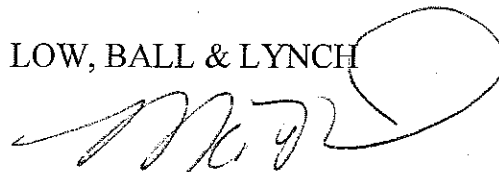
COX, CASTLE & NICHOLSON LLP
JONATHAN S. KITCHEN
ALI P. HAMIDI



Attorneys for Defendants
SRI OLD TOWN, LLC and
FEDERAL REALTY INVESTMENT
TRUST

18
19 ^{May 14}
20 Dated: ~~January 14~~, 2010

LOW, BALL & LYNCH



MARK F. HAZELWOOD
Attorneys for Defendants
TOWN OF LOS GATOS

23
24
25
26
27 //
28 //

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: July 12, 2010


Honorable JAMES LARSON
United States Magistrate Judge


Dated: _____, 2010 DEFENDANT FEDERAL REALTY
INVESTMENT TRUST

By: _____

Dated: 5-14, 2010

DEFENDANT TOWN OF LOS GATOS

By: _____


MICHAEL D. MARTELLO
Interim Town Attorney

//
//
//
//

APPROVED AS TO FORM:

Dated: January 14, 2010

LAW OFFICES OF PAUL L. REIN

By PAUL L. REIN
Attorneys for Plaintiff
SEBASTIAN DEFRANCESCO

Dated: January 14, 2010

COX, CASTLE & NICHOLSON LLP
JONATHAN S. KITCHEN
ALI P. HAMIDI

Attorneys for Defendants
SRI OLD TOWN, LLC and
FEDERAL REALTY INVESTMENT
TRUST

Dated: January 14, 2010

LOW, BALL & LYNCH

MARK F. HAZELWOOD
Attorneys for Defendants

CONSENT DECREE AND [PROPOSED] ORDER
CASE NO. 09-2123 JL

Law offices of
PAUL L. REIN
200 Lakeside Dr., Suite A
Oakland, CA 94612-3503
(510) 832-5001

L

Figure-01
Locations of Inaccessible Features

